



<u>PROGRAM:</u>	LLB
<u>MODULE:</u>	LAW OF CIVIL PROCEDURE
<u>CODE:</u>	SPR0000 / CPR41Y0
<u>DATE:</u>	23 MAY 2019
<u>DURATION:</u>	3 HOURS (180 MINUTES)
<u>TOTAL MARKS:</u>	80
<u>EXAMINERS:</u>	MS M DU PREEZ & MRS Y JOUBERT
<u>MODERATOR:</u>	PROF DS DE VILLIERS
<u>NO OF PAGES:</u>	10 (TEN) & A DRAFTING BOOKLET
<u>INSTRUCTIONS:</u>	

- Please read all questions carefully.
- Plan your answers before you write them down.
- Answer only what has been asked.
- Don't waste time by providing information/answers which has/have not been asked for.
- Accept that you act as the attorney of record where you are required to provide an opinion and/or advice to a client.
- Please refer to authority (case law, legislation and, most importantly, the rules of court) where relevant.
- To the extent that you are required to draft court documents and/or notices, please ensure that the documents are complete (with a proper heading, conclusion, signature etc) and that you include all relevant information/details.
- Use full sentences and pay attention to grammar, spelling etc.
- You may answer the questions in any order.
However, please ensure that you number your answers clearly.
- **Important:**
Please answer all drafting questions in the separate drafting booklet.

QUESTION 1

Briefly explain each of the following concepts/terms:

- 1.1 issuing of court documents; (1)
- 1.2 class action; (1)
- 1.3 *amicus curiae*; (1)
- 1.4 cumulative jurisdiction; and (1)
- 1.5 *curator bonis*. (1)

[5]

QUESTION 2

Critically comment on each of the statements below:

- 2.1 The sheriff of the court acts as the agent of the initiating party, ie the plaintiff. (1)
- 2.2 The sheriff may perform his/her duties outside the area of jurisdiction of the court for which the sheriff has been appointed. Service outside the jurisdictional area of appointment will be regarded as and constitutes proper service. (1)
- 2.3 The sheriff's return of service constitutes conclusive evidence of the manner of services and of the averments contained in the return of service. (1)
- 2.4 An insolvent has unlimited *locus standi* in matters concerning his/her sequestrated estate only. (1)
- 2.5 A trust is considered a separate legal entity which can sue and be sued in its own name. (1)
- 2.6 At common law, a partnership has no *locus standi*. As a result, it can't sue or be sued in its own name and all individual partners have to be cited. (1)

[6]

QUESTION 3

Briefly indicate what the purpose of each of the following is:

- 3.1 mandate letter; (1)
- 3.2 notice of withdrawal; and (1)
- 3.3 replying affidavit. (1)

[3]

QUESTION 4

Indicate in each instance below which is the *most appropriate next procedural step* to take on behalf of your client. In particular, and where relevant, you are required to identify the document to be delivered by/on behalf of your client.

- 4.1 You are taking a matter on appeal and your authority to act on behalf of the appellant is questioned; (1)
- 4.2 You receive instructions to proceed with legal action in the Magistrate's Court to enforce a credit agreement in terms of the National Credit Act, 34 of 2005. (1)
- 4.3 You are instructed to act on behalf of the defendant in a civil matter.
- When considering the summons, which the sheriff served on your client, you notice that the plaintiff sued your client on the basis of a cheque which was payable some 7 (seven) years ago. (1)
- 4.4 Your client has terminated your mandate and instructed a new attorney in the matter. Your client still owes you money for professional services rendered and asks you to return all documents in the matter to him without delay. (1)
- 4.5 You act for the respondent. The applicant has issued an application in terms of which he applies for an interdict against your client. The sheriff served the application on your client 4 (four) days ago. (1)
- 4.6 With reference to paragraph 4.5 above, accept that:
- 4.6.1 Your client intends to raise a legal point only, ie, that the applicant is a minor and has no *locus standi* in the matter. (1)
- 4.6.2 Your client has a defence on the merits of the applicant's case, which he intends to raise in addition to the legal point. (1)

[7]

QUESTION 5

Consider the following facts and answer the questions below in relation thereto:

Ms Susan Daniels is 21 years old. She suffers from a severe mental disability and resides with her mother, Maria, in Centurion, Pretoria.

During August 2018, she instituted a civil action for damages against the Department of Home Affairs. It arose out of an incident that occurred on the 24th of December 2018 at the Pretoria offices of the Department of Home Affairs.

On the particular day, employees were cleaning the floors at the offices of the Department in Pretoria. Susan, whilst queuing to complete certain documents, slipped on the wet floor and fell. In the process, she sustained serious bodily injuries. In addition to breaking a leg and injuring four of her fingers, she hit her head against a steel railing. Aside from cuts and bruises, she also sustained severe head injuries. Her total medical expenses amount to R905 000 (nine hundred and five thousand rand).

5/...

She alleges that the incident was caused by the sole negligence of the defendant in that it failed to take reasonable steps to ensure that use of the floor by members of the public was safe. In addition, the plaintiff alleged that the floor was cleaned without warning signs alerting members of the public to the fact that the floor was wet and that they could slip and fall.

The defendant denies negligence as well as the averments in connection therewith.

- 5.1 Indicate what the standard prescription period is for a claim of this nature. (1)
- 5.2 Is it mandatory to send a letter of demand to the defendant in this matter? Explain your answer. (1)
- 5.3 Indicate with which requirements the plaintiffs has to comply prior to the institution of legal action in this matter and also what the prescribed period for compliance is. (2)
- 5.4 Briefly explain the procedure in terms of Rule 57 of the Uniform Rules of Court purposes of this litigation. (1)
- 5.5 Draft the citation of the plaintiff as it will appear in the summons. (2)
- 5.6 Refer to the calendar attached hereto as "Annexure A".

Accept that the summons was served on the defendant on Friday, 5 August 2018. In terms of the Uniform Rules of Court, a period of 20 (twenty) days is allowed/prescribed for purposes of delivering a notice of intention to defend.

Indicate what the *last day* is for purposes of delivering this notice. (1)

[8]

QUESTION 6

Briefly discuss only the *ratio decidendi* in each of the following cases:

- 6.1 *Plascon Evans Paints Ltd v Van Riebeeck Paints* 1984 (3) SA 623; (2)
- 6.2 *American Flag Plc v Great Africa T-shirt CC* 2000 (1) SA 356 W; (2)
- 6.3 *Dusheiko v Milburn* 1964 (4) SA 648 A; (2)
- 6.4 *Luna Meubel Vervaardigers (Edms) Bpk v Makin (t/a Makin Furniture Manufacturers* 1977 (4) SA 135 (W); and (4)
- 6.5 *Mukaddam v Pioneer Foods (Pty) Ltd* 2013 (5) SA 89 (CC). (5)

[15]

QUESTION 7

Consider the following facts and answer the questions below in relation thereto.

Please answer this question in the drafting booklet.

On 6 May 2019 you consult with your client, Mrs Gina Ezra, who resides in Pretoria. She intends to institute divorce proceedings against her husband, Geoffrey.

She informs you as follows:

The parties met and were married out of community of property in Cape Town during 2015. They subsequently moved to Pretoria.

Unfortunately the relationship with her husband deteriorated over time due to the involvement of third parties. They have a son, Samuel, aged 3.

The parties no longer live together as husband and wife. Geoffrey left the communal home in Pretoria during the course of December 2018. Other than occasional e-mail messages, she has not had much contact with him since then. According to some of his family members, Geoffrey has relocated to London in the United Kingdom, where he works as a bar tender. They have provided her with his work address as follows: 15 Hilton Avenue, St Pauls Hotel, London, EC1A4HT.

After having explained the service requirements in a divorce matter to your client, you are instructed to proceed, as a first step, with an application for leave to serve the divorce summons in London.

Draft the necessary notice of motion *only* for purposes of this application.

You do *not* need to draft the affidavit.

Please answer this question in the drafting booklet. (10)

[10]

QUESTION 8

Indicate how the following litigants (plaintiffs) will be cited in the plaintiff's summons / particulars of claim:

You should start the citation as follows in each instance:

"The plaintiff is..."

Please add your own information to the extent necessary.

- 8.1 Sam Adamson is eight years old.
She is a scholar attending Melville Primary School and resides with her father, Andrew, at 12 5th Avenue, Westdene, Johannesburg.

You may accept that her father is not acting in a dual capacity. (1)

- 8.2 ABC Marketing Services (Pty) Ltd.
The company has its registered address at 1 Sandton Drive, Sandton, Johannesburg. (1)

7/...

8.3 The Khumalo Family Trust.

The trustees are Mr and Mrs Khumalo, their son as well as the family's lawyer, Mr Peterson. (1)

8.4 A partnership trading as Sole Shoe Providers (SSP).

It is owned by two partners, Mr Westin and Mr Southern. (1)

[4]

QUESTION 9

Consider the facts below and answer the questions relating to these facts.

When identifying a court, you are required to name the court *correctly*.

In order to get a mark, you need to provide the *full name* of the relevant court.

9.1 Kabelo Thlagoane and Hendrik Huizeman have been in a motor vehicle collision which resulted in both parties sustaining physical injuries. The collision occurred in Durban.

Kabelo resides in Port Elizabeth with his wife, but he works in his firm's Johannesburg office for a few days every month. Hendrik is originally from Zimbabwe - he is an adventurer who travels all around the world.

He will be in Cape Town until the end of July 2019 for a trade fair. He does not own any property in South Africa.

You act for Kabelo, who wants to bring a claim for damages arising from the physical injuries he sustained.

9.1.1 Which division of the High Court has jurisdiction to hear the matter?

You are required to motivate your answer with reference to the relevant legislation. (2)

9.1.2 What steps would need to be taken in order ensure that the South African court has jurisdiction? (1)

9.1.3 If Mr Huizeman owned property in South Africa and you attached it for purposes of jurisdiction, would this be attachment *ad fundandam* or *ad confirmandam*? (1)

9.1.4 Indicate what the standard period of prescription is for this kind of matter. (1)

9.1.5 Is it mandatory to send a letter of demand to the Mr Huizeman in this matter?

Explain your answer. (1)

- 9.2 Mr and Mrs Haupt are divorced. Mrs Haupt has been awarded care/custody in respect of the three minor children born from the marriage. The children are supposed to stay with her at her home in Johannesburg, but Mr Haupt has discovered that they move between their aunt in Johannesburg, a friend of their mother's in Krugersdorp and their maternal grandmother who stays in Bloemfontein.

Mr Haupt is very unhappy with this arrangement. He has not seen the children for a period of 6 months and intends to proceed with an application to have the children permanently reside with him at his home in Pretoria.

- 9.2.1 Which division of the high court has jurisdiction to hear this application?

Motivate your answer with reference to the relevant legislation. (2)

- 9.2.2 Assume that Mr Haupt instructs you to bring the application as a matter of urgency.

What form of the notice of motion is generally used in applications of this nature? (1)

- 9.2.3 Assume that you are drafting the urgent application.

You find that you have to include hearsay evidence in Mr Haupt's affidavit.

Will this evidence would be accepted by the court?
Explain your answer. (1)

[10]

QUESTION 10

Briefly discuss the following statement with reference to the different options available to a court under these circumstances:

"If a material dispute of fact arises during application proceedings which can't be resolved on the papers, the court may make such an order as is necessary to ensure a just and expeditious decision."

(3)

[3]

QUESTION 11

Consider the facts below and draft the relevant document/s:

The Johannesburg Business Forum and Johannesburg Residents Association intend to join forces in a court application against Eskom. They intend to proceed with this application in the second half of 2019.

Please answer this question in the drafting booklet.

This is intended to counter Eskom's threat to cut off electricity to all Johannesburg suburbs as part of its national load shedding programme later this year during the December holiday period.

According to the applicants, the effects on the city should the cuts proceed, will be catastrophic as it would have dire consequences for hospitals, schools and universities, emergency services, travel and tourism as well as business operations and industry in Johannesburg.

In addition, the suspension of electricity would also have substantial repercussions for the provision of municipal services such as water and sewage disposal and, as a result, affect the health and general welfare of the population.

Accept that the applications approach the court in the normal course, and not on an urgent basis.

They intend to approach the High Court to ask for Eskom to be interdicted from interrupting or terminating the City of Johannesburg's electricity supply.

The respondents are Eskom, the National Energy Regulation of SA (NERSA) as well as the City of Johannesburg Municipality.

Draft the necessary notice of motion *only* for purposes of this application.

Add your own information to the extent necessary/required.

Pleaser answer this question in the drafting booklet.

(8)

[8]

TOTAL: [80]

ANNEXURE A

Calendar - August and September 2018

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
1	2	3	4	5 Service of summons	6	7
8	9 Public holiday	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31	1 September	2	3	4
5	6	7	8	9	10	11

